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March 8, 2019

The Honorable Amy Nielsen
House District 77
State Capitol
Des Moines, IA 50319

SENT VIA EMAIL to Amy.Nielsen@legis.iowa.gov

Dear Representative Nielsen:

On January 4, 2019, I responded on behalf of the Iowa Department of Administrative Services (DAS) regarding information you had requested relating to complaints and investigations of alleged sexual harassment involving employees of the executive branch. My response stated that the requested information was protected from disclosure under Iowa law but suggested you seek access to the information through the Legislative Services Agency (LSA) pursuant to Iowa Code Chapter 2A.3. You did so and, on January 25, DAS provided the information to LSA. It is my understanding LSA has concluded they cannot share with you the information DAS provided. You have now requested the same information pursuant to Chapter 22.

Under the circumstances, DAS has asked me to re-examine the confidentiality provisions at issue – Iowa Code Chapter 19B.12 and Iowa Administrative Code rule – 68.6(1) – in light of the important public policy and transparency issues related to complaints of sexual harassment in State government. I have done so and, while I continue to believe that the importance of providing a truly “confidential” process to State employees who make sexual harassment complaints cannot be understated and should not be diminished, I have concluded that the provision of State-wide aggregate data relating to the number and disposition of harassment complaints does not violate the statutory mandate for DAS to adopt “confidential grievance procedures” nor the assurances in the administrative rules that complaints and related materials would be treated as confidential. Accordingly, I have attached a copy of the January 25 DAS letter to LSA which contains the requested information.

Please let me know if I can be of further assistance.

Respectfully,

JEFFREY S. THOMPSON
Solicitor General

Encl.



January 25, 2019

Holly M. Lyons
Legislative Service Agency, Fiscal Services Division Director
Room G01 State Capitol Building
Des Moines, IA 50319

Re: Legislative request for information

Dear Ms. Lyons,

This letter is in response to your January 14, 2019, correspondence requesting information regarding harassment complaints, including sexual harassment complaints, pursuant to the Legislative Services Agency's authority to obtain such information under Iowa Code section 2A.3.

Responses to your inquiries are provided in turn below. Please note that the data reflected below reflects information in DAS's possession. Specifically, with respect harassment complaint investigations, while DAS generally conducted investigations regarding harassment complaints filed with it on a statewide bases for executive branch agencies (excluding the Board of Regents) beginning in fiscal year 2016, no regulatory authority existed providing DAS with exclusive authority to conduct those investigations and some agencies may have conducted investigations into such complaints for which DAS would not be in possession of responsive data. Prior to fiscal year 2016, harassment investigations would have been conducted by the executive branch agency in which the complaint arose unless that agency requested DAS's assistance with conducting the investigation. Accordingly, the responsive data below dates back to the beginning of fiscal year 2016. Importantly, with the recent adoption of amendments to Iowa Administrative Code chapter 11—68, DAS is vested with the exclusive authority, unless directed otherwise by the Office of the Governor, to conduct harassment complaint investigations on a statewide basis (excluding the Board of Regents) for executive branch agencies.

- 1. How many harassment complaints is the State currently investigating? How many of these are sexual harassment complaints?*

As of January 15, 2019, DAS has seven (7) open complaints alleging harassment; six (6) of which alleged sexual harassment.

- 2. How many harassment cases has the State investigated but are now closed over the last five fiscal years broken down by year? How many of these were sexual harassment cases, also broken down by year?*

Fiscal Year	Harassment Complaints	Sexual Harassment Complaints
2019	23	9
2018	34	6
2017	41	4
2016	18	3

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3. *How many disciplinary actions, including dismissals or resignations have taken place due to a finding of harassment? How many of these actions involved sexual harassment?*

Aggregated over fiscal years 2016-2019, there were two (2) non-termination/resignation disciplinary actions, three (3) terminations and three (3) resignations.

4. *How much has the State paid in settlements for harassment claims over the last five fiscal years broken down by year? How much has the State paid in settlements for sexual harassment claims over the last five fiscal years broken down by year?*

DAS is not in possession of this information. This inquiry may be better answered by the Attorney General's Office.

5. *How much has the State paid in private sector legal fees for defense of harassment complaints over the last five fiscal years broken down by year. How much has the State paid in private sector legal fees for defense of sexual harassment complaints over the last five fiscal years broken down by year?*

DAS is not in possession of this information. This inquiry may be better answered by the Attorney General's Office.

6. *How many allegations of harassment have been founded? How many of these were allegations of sexual harassment. Please provide the number for each year, for the last seven years, including 2018.*

Fiscal Year	Founded Harassment Complaints	Founded Sexual Harassment Complaints
2019	3	2
2018	1	1
2017	2	2
2016	1	0

DAS's position is that the data responsive to questions 1, 2, 3 and 6, although in aggregate form and/or broken down by fiscal year, constitutes confidential information pursuant to Iowa Code section 19B.12 and Iowa Administrative Code rule 11—68.6(1). DAS position is that even in aggregated form broken down by fiscal year, publication of this information could potentially compromise a victim's confidentiality interests. Consequently, pursuant to Iowa Code section 2A.3(1)(b), DAS requests the Legislative Services Agency maintain the confidentiality of the responsive data. I'd be happy to meet with you to discuss this information.

Sincerely,



Janet E. Phipps, Director
Iowa Department of Administrative Services